

## **Class Size and Composition: Dorsey Award, Class Size Regulation s. 1(4) — Definition of “Consult”**

Further to BCPSEA @issue No. 2009-26 dated August 24, 2009, and subsequent e-mail correspondence, please find attached a copy of the Dorsey award that was issued this morning, as well as further clarification on the BCPSEA *Guidelines for Implementing Class Size and Composition Provisions* (Guidelines) provided to districts on August 28, 2009. Because of the impact of this decision and its urgency, following is a brief description of the award and clarification of the Guidelines.

### **Regulation**

The class size regulation was amended on June 27, 2008 to include a definition of “consult.”

The term “consult” in those sections is now defined in section 1(4) of the Regulation to mean:

- (a) provision by the principal of a school to the teacher of a class with
  - i. information relevant to a proposal for the size and organization of the class, and
  - ii. 2 school days before a decision is made respecting the size and organization of the class for the teacher to consider the proposal and provide the principal with the teacher’s views in that regard, and
- (b) consideration by the principal of the teacher’s views, if any have been provided, and “consulted” has a similar meaning.

### **Issue**

“Under the Class Size Regulation definition of “consult” in section 1(4), does providing a teacher with access to the relevant documents meet the requirement of the Regulation or is it required that hard copies be provided to teachers?”

### **Decision**

For the purposes of the above noted section, principals are required to provide teachers with hard copies or alternately, directing and providing teachers with electronic access to the information which the principal deems to be relevant to the proposal for the size and organization of the class.

### **What is Relevant?**

Arbitrator Dorsey has indicated that it is the principal’s responsibility to determine what information is relevant. However, Arbitrator Dorsey has ruled that the relevant documents would include:

1. The class list with the identification of students with an IEP

2. Copy of the most recent IEP if it has not already been distributed to the teacher earlier in the current school year.
3. Any other documents that the principal deems to be relevant to his/her proposal for the size and organization of the class.

As noted above, to date no further arbitrable guidance or rulings have been issued that would describe what other, if any, documents would be deemed relevant by the principal. Principals need to determine at the school level which documents and information they feel are relevant to their proposal on an individual class by class basis. If applicable, and not already provided to the teacher earlier in the school year, there should be strong consideration given to the inclusion of student safety and behaviour plans (especially if not detailed in the IEP), and student transition documents prepared by the previous years teacher(s). The principal must also include copies of any additional documents or information that the principal feels is relevant in their initial proposal for the size and organization of the class. This must be considered within the context of each individual class situation.

### **Action Required by Districts**

Under section 1(4) of the class size regulations, principals are required to determine and provide teachers with information relevant to the proposal for the size and organization of the class. This information is to be provided to teachers in the form of a hard copy or, in the alternative, the teacher is to be provided with electronic access to this information. Further, if this information has already been provided to a teacher earlier in the year, there is no requirement for the principal to reproduce it and provide it to the teacher for a second time. The invitation letter to the teacher regarding the consultation meeting should include reference to the documents provided in hard copy, via electronic means and/or previously provided to the teacher earlier in the school year.

### **Further Clarification of BCPSEA Guidelines**

Following are some clarifications to the BCPSEA Guidelines sent to districts August 28, 2009.

#### **▪ Group Consultations**

Issue: Pages 5 and 6 of the Guidelines describe situations where consultation meetings with a group of teachers (centering around and concerning a single class) may be considered. The concern raised was that some teachers may not feel comfortable with this situation and may prefer consulting with the principal on an individual basis.

Clarification: Where the teachers of a single class and the principal agree, a joint consultation involving these teachers and the principal may occur. This does not preclude any teacher of that class from opting for an individual consultation instead.

#### **▪ Definition of Class**

Issue: Pages 3 and 4 of the Guidelines discuss which classes are to be counted for the purposes of Bill 33. This section describes the application/use of the definition of class in the regulations, as well as the exceptions of section 5 of the regulations. The last point under this section states, "As a result, programs such as advisory, homeroom, grad transition, resource rooms, learning assistance rooms, alternate programs, classes exclusively for students with disabilities or exceptional gifts or talents, etc., do not trigger the two Bill 33 requirements."

Clarification: While the vast majority of the examples provided above will not trigger the Bill 33 requirements, there may be some unique situations in this regard that may need to be examined more closely. As a result, when assessing whether a class should be excluded or not from the Bill 33 requirements, the final determination should be analyzed/confirmed in relation to the definition of class and exclusions listed section 5 of the regulations.

- **Release Time**

Issue: Page 7 of the Guidelines states, "There is no requirement under Bill 33 to provide paid release time for attending or preparing for the consultation. However, in some districts, this may be addressed in the collective agreement. A teacher's work day is not limited to instructional time. Consultations do not have to take place during instructional time. Consultations can take place before and after school hours, during recess and at lunch."

Clarification: While it was acknowledged that, subject to any collective agreement language, there is no requirement under Bill 33 to provide paid release time for attending or preparing for the consultation, the BCTF felt that these guidelines promoted districts scheduling consultations during lunch and recess. It is recommended that consultations only occur during times of the day that permit adequate time for discussion.

- **Union Representation at the Consultation Meeting**

Issue: Page 12 of the Guidelines provided Arbitrator Dorsey's findings that, subject to collective agreement language, Bill 33 does not require the attendance and participation of union representation at the consultation meeting.

Clarification: While it was acknowledged that, subject to any collective agreement language, there is no requirement under Bill 33 for union representatives to attend the consultation, the BCTF felt that these guidelines promoted districts excluding union representatives from consultation meetings. It is suggested that while it is not a requirement under Bill 33, normal district practices with respect to union representatives at meetings with teachers should apply. As noted in the Guidelines, six of the seven representative schools had union representatives present during the consultation meetings. Please note that this in no way suggests that districts are expected to incur any costs related to release time for such representation.

- **Counsellors — Building/Organizing and Placement of Students**

Issue: Yesterday, BCPSEA sent out advice in response to the BCTF instructions that counsellors should not place more than 30 students or more than 3 IEP students in a class without being directed. It is our understanding that this BCTF advice was predicated on their concern that "this has been used in arbitration to support the principal's opinion that a class is appropriate for student learning." While the BCPSEA response yesterday addressed the issue of the counsellor, it did not address the potential prejudice of the receiving teacher.

Clarification: BCPSEA has now added a new last sentence to our response provided yesterday. The complete response is now as follows:

**BCTF statement:** "Counsellors should not place more than 30 students or more than 3 IEP students in a class, as this has been used in arbitration to support the principal's opinion that a class is appropriate for learning. Counsellors should refer such placements to administrators, and if directed to proceed they should contact the local."

**BCPSEA response:** One of the duties of a counsellor is to build/organize classes within the resources provided. This may include grades 4-12 classes that have more than 30 students or K-12 classes with more than 3 IEP students. With respect to Bill 33, it has been acknowledged by BCPSEA that participation by the counsellor in the building/organization/placement or reorganization of a grade 4-12 class that has more than 30 students or K-12 classes with more than 3 IEP students is not a positive or negative admission by that counsellor that the class(es) are appropriate for student learning. While it is the duty of the counsellor to organize classes, such classes are organized or re-organized under the statutory authority of the principal. Similarly, when a teacher has more than 30 grade 4-12 students or K-12 classes with more than 3 IEP students placed in their class by a counsellor, this in itself is not a positive or negative admission by the teacher that this class is appropriate for student learning.

## Questions

Please contact your BCPSEA labour relations liaison for further information or clarification.

Attachment: Dorsey award, Class Size Regulation, s. 1(4) — Definition of "Consult," September 11, 2009